

PARTICIPATING UTILITY (ENGINEERING)

DERRY - LONDONDERRY
IM-0931(201)
13065
(I-93; Exit 4A and Connecting Roadway)
(UTILITY WORK)

UTILITY AGREEMENT

This Agreement is made in triplicate this _____ day of _____, _____, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", Design-Builder, a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "Design-Builder", and _____ (Vendor # _____), a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the third part, hereinafter called the "*".[\[FOR AGREEMENT WITH COMPANY\]](#)

This Agreement is made in triplicate this _____ day of _____, _____, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", Design-Builder, a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "Design-Builder", and _____ (Vendor # _____), a municipally owned utility/municipality, party of the second part, hereinafter called the "*".[\[FOR AGREEMENT WITH MUNICIPALITY\]](#)

WITNESSETH:

WHEREAS, the State has the approval of the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA), for a Federal-Aid Project (Organization Code 3054), Derry – Londonderry, IM-0931(201), 13065, for the preliminary and final design, right-of-way acquisition, and construction of EXIT 4A on I-93 and connecting roadway, in the Towns of Derry and Londonderry, County of Rockingham, New Hampshire, which construction necessitates the {installation/relocation/replacement} of Description of Facility to the extent required to permit construction of the Project, and,

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDOT), hereinafter called the "Commissioner", is having the Design-Builder prepare plans and specifications for such Project marked Derry – Londonderry, IM-0931(201), 13065, which plans and specifications meet with the approval of the * and will be on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, the State is obligated to reimburse the * for _____ {relocation/replacement} due to the _____ facilities prior existence to the State Highway facility, and, [\[UTILITY PRE-EXISTED STATE ROADWAY\]](#)

WHEREAS, said _____ facility(ies) is/are located {on _____ (a municipally maintained roadway)/within an easement}, the taking of which is compensable in eminent domain and therefore the costs of the relocations are the responsibility of the Project, and, [FOR MUNICIPAL FACILITIES ON MUNICIPALLY MAINTAINED ROADWAY or UTILITY HAS PROPERTY RIGHTS]

WHEREAS, a portion of said _____ facility(ies) is/are located on _____ (a State maintained roadway), and therefore the costs of the relocations are the responsibility of the Town, and, [FOR MUNICIPAL FACILITIES ON STATE MAINTAINED ROADWAY]

WHEREAS, the * desires the _____ to be included as part of the Highway Contract, and, [WORK INCLUDED IN STATE CONTRACT]

WHEREAS, the * desires the assistance of the Design-Builder in the engineering of the {installation/relocation/replacement} of the aforementioned facilities, [IDENTIFIES WHY WORK TO BE PERFORMED BY DESIGN-BUILDER]

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. [INSERT DESCRIPTION OF WORK AND BEGIN PARAGRAPH #'S.]

The * shall furnish the labor, equipment, and materials to perform design engineering and construction services for the participating _____ relocations at the following approximate locations:

The Design-Builder shall furnish the labor, equipment, and materials to perform design engineering and construction services for the participating _____ relocations at the following approximate locations:

The * shall furnish the labor, equipment, and materials to perform design engineering and construction services for the non-participating _____ relocations at the following approximate locations:

- # The Design-Builder shall furnish the labor, equipment, and materials to perform design engineering and construction services for the non-participating _____ relocations at the following approximate locations:

Method of Payment for Described Work:

Work will be paid for at {Actual Cost estimated at and not to exceed/Lump Sum cost of/Fixed Cost estimate at} \$xxxxx.xx (Work Class Code T135B Par Design):as shown in the attached estimate:

Billing for Cost of Engineering submitted by * to:

Melodie A. Esterberg, P.E., Chief of Design Services
 Bureau of Highway Design
 New Hampshire Department of Transportation
 7 Hazen Drive, PO Box 483
 Concord, NH 03302-0483

Detailed billing shall be submitted showing:

- State Project Name & Number.
 - State Organization and Work Class codes.
 - Brief description of work covered.
 - Dates work was started & completed.
 - Agreement amounts, amounts invoiced to date, amounts paid to date, amount due this invoice.
 - Invoice Summary containing employee, generic position, hourly rate, hours worked, wages paid, total labor costs, { overhead rate and total overhead cost,} { fixed fee,} and direct expenses.
 - Whether billing is partial or final.
 - Bill or invoice number.
 - Date of billing.
- #. The work described in Paragraph(s) __ above is shown in greater detail on the attached concept plans and in the attached scope of work and estimates being made a part of this Agreement.[\[WORK HIGHLIGHTED ON PLANS\]](#)

- # The work described in Paragraph(s) __ above, will be done by * forces and/or under an existing continuing contract and/or by competitive negotiations contract using qualifications-based selection procedures. Continuing contracts shall be defined as a written contract between the * and an Engineer which regularly does work for the *. The * will have awarded the continuing contracts by a competitive negotiations process using qualifications-based procedures, the attached documentation of which being made a part of this Agreement.[UTILITY PERFORMED WORK]
- #. The * agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the Project's design completion date, provided the * is not delayed by acts of God, strikes, or late delivery of critical materials.[COORDINATION OF WORK WITH STATE PROJECT]
- #. The * agrees to perform the work hereinbefore proposed, in accordance with the concept plans mentioned above, including such additions or modifications hereafter approved, in writing, by the *, Design-Builder, and the State. The amount of work to be performed by the *, including any changes, shall be approved by the Design-Builder, State, and the duly authorized representatives of the Federal Government before the work is performed, and the * shall be reimbursed therefore, as hereinafter provided, except that the cost of any such work which is not approved as above indicated shall be borne by the *.[STATEMENT OF PRIOR APPROVAL OF WORK]
- #. The * agrees to notify the Design-Builder and State of the starting and completion dates of the work hereinbefore described, and to provide an Invoice Summary showing the hours of labor, equipment and materials used with the invoice. The *, Design-Builder, and the State shall resolve any possible discrepancies. The Invoice Summaries are not the basis for payment, but are required for verification of the work performed.[REQUIREMENT FOR INVOICE SUMMARY]
- #. Federal and State participation in the cost of the work done under this Agreement shall be computed on the basis of the provisions and regulations of 23 CFR, Part 645, Subpart A and/or Subpart B. The subject regulation, including all current amendments and/or revisions, is hereby made a part of this Agreement.[COST PARTICIPATION ACCORDING TO FEDERAL REQUIREMENTS]
- #. Upon the receipt of satisfactory detailed invoices without arbitrary percentage or lump sum addition for overhead expenses, the State agrees to reimburse the * {for ___% of/the agreed lump sum amount for} the costs of labor, equipment, and materials to perform the work described in Paragraph(s) __ above, said costs being {estimated at }\$_____. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the State to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement.
- #. Periodic progress payments will be made to the * upon presentation of invoices and substantiation of work performed (Invoice Summaries) provided the value of the work

invoiced, other than the final invoice, is in excess of \$1,000.00.[\[PERIODIC PROGRESS PAYMENTS\]](#)

- #. The * shall submit a final invoice no later than two (2) months after completion of its work on all lump sum payments, or six (6) months after completion of its work on all actual cost payments. Unless otherwise approved by the State in advance, the *’s work shall be completed no later than two (2) months after notification by the State that the design of the State’s Project is complete. Upon submission of the final invoice and issuance of the Final Audit of Agreement, no further charges will be accepted. The State will make payment to the * after submission of progress or final invoices provided that all substantiating documentation has been submitted to the State for the work invoiced therein.[\[FINAL INVOICES SUBMISSION REQUIREMENTS\]](#)
- #. The * agrees to record the costs paid by the State for the aforementioned facilities and maintain related accounting records in accordance with applicable provisions of the {Cost Accounting Standards prescribed by the Cost Accounting Standards Board as defined in 48 CFR Chapter 99 /[\[for Power Companies\]](#)Uniform System of Accounts prescribed by the State/Federal Energy Regulatory Commission}, and the costs paid by the State for facilities covered by this Agreement and the corresponding current and cumulative depreciation amounts will be eliminated from the rate determination process.[\[ACCOUNTING MEANS AND METHODS\]](#)
- #. Upon the receipt of a final invoice, so marked, showing the dates the work was started and completed, the State agrees to reimburse the * the {actual cost estimated at/agreed lump sum cost of} \$_____ as full compensation for costs of _____ complete. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the State to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement.
- #. All cost records of the * pertaining to the Project will be subject at any time to inspection and audit by representatives of the State and the Federal Government for a period of not less than three (3) years from the date final payment is received by the *.[\[REQUIREMENT TO MAINTAIN RECORDS FOR FUTURE AUDITS\]](#)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DESIGN-BUILDER

COMPANY/MUNICIPALITY

X

By: _____
(Signature)

By: _____
(Signature)

(Typed or Printed Name)

(Typed or Printed Name)

(Title)

(Title)

_____ checker's initials

(Date)

THE STATE OF NEW HAMPSHIRE
Department of Transportation

By: _____
Peter E. Stamnas, P.E.
Director of Project Development

(Date)

_____ JAM